

Next Stop on the Way to Constitutional Disarray in Poland: Electoral Law Reform

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Anna Rakowska-Trela Mo 18 Dez 2017

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Last Thursday, the Sejm has passed another hugely controversial law that might change the constitutional setup in Poland without changing a letter of the constitution itself. The law claims, according to its title, to „increase the participation of citizens in the process of electing, functioning and controlling certain public bodies“ (doc. 2001). In large parts, it consists of amendments to the Polish Electoral Code (E.C). Its adoption is opposed by the parliamentary opposition, by the electoral administration bodies and by many experts. Now, it is expected to be considered in the Senate.

The enactment of this law would violate the principle of a democratic state ruled by law (Article 2 of the Constitution of the Republic of Poland) in three ways: first, it destabilizes the electoral system without a clear or evident need and treats the E.C. as a political instrument. Secondly, it does not provide for sufficient time of adaptation (*vacatio legis*), which may jeopardise free and fair local elections and the stability of the political system. Thirdly, the draft bill contains numerous unclear provisions and is in many parts written in a careless and contradictory way. Some of the proposed changes are manifestly unconstitutional, some are a regression compared to the current solutions the introduction of which lowers electoral standards and weakens the transparency and fairness of the elections.

A plunge into chaos

The supreme body of electoral oversight in Poland, the National Electoral Commission, currently consists of nine judges from the Supreme Court, the Supreme Administrative Court and the Constitutional Tribunal. As members of the judiciary, they are professionally used to work under conditions of impartiality and independence, which safeguards the trust placed by the public in the correctness of the electoral process.

That would dramatically change if the draft amendment is adopted: According to the draft bill, only two of the nine members would be judges, the rest being appointed by the political factions represented in the Sejm according to their respective share of seats. That would entail a considerable politicization of the National Electoral Committee.

As to the electoral committees on county and province levels, the draft bill calls for the appointment of 100 new commissioners who do not have to be judges either and who would take the place of the current 51 existing commissioners. They shall be appointed by the National Electoral Commission at the request of Minister of the Interior, a highly unpopular and controversial person named Mariusz Błaszczak. They would be in charge to draw new electoral maps and define constituencies within three months after the entry into force of the amendment. The division into the constituencies into voting districts shall be made by local councils within another month – a task that requires a comprehensive

analysis of the sociological determinants in the respective area and would now have to be tackled by completely inexperienced commissioners within a fraction of the time the former electoral reform assigned to their predecessors.

The head of the National Electoral Office, that is another dangerous feature of the draft bill, would in the future be appointed by the Minister of the Interior..

Another highly controversial aspect about the draft law is the way it regulates electoral campaigns. The most questionable is the introduction of regulations limiting the expenditure limits in local elections in such a way, that those limits relate only to expenditures for advertising (in press, radio, television and other media), which can jeopardise the principle that financing of political parties and electoral campaigns shall be open to public inspection.

The draft bill further abolishes the possibility of postal voting (Article 4 point 23), which is highly controversial for disabled persons.

Last but not least, the draft bill limits the number of terms of office for mayor to a maximum of two. This would probably apply already in the local elections in autumn 2018 and would prevent many long-standing mayors from the opposition party PO to run for another term.

This law, pushed through by PiS, the anti-democratic ruling party, will lead to a politicization of the electoral administration, so there are risks of a loss the transparency of the election. Changes in the division into constituencies in local elections may lead to a distortion in favour of the PiS. The coincident politicization of the Polish Supreme Court and other courts, which adjudicate upon the validity of the elections, may raise serious doubts regarding the fairness of the elections held in 2018 (and the next years).

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